

Opinions, Advice, and Legislation Quarterly News

Office of the
Maryland Attorney General



October-December 2002

OPINIONS

CORRECTIONS – WHETHER DIVISION OF CORRECTION MAY SET MINIMUM AGE OF 21 FOR ITS CORRECTIONAL OFFICERS

Question: May the Division of Correction (“DOC”) require that applicants for correctional officer positions in its facilities be at least 21 years old?

Answer: A DOC policy requiring an applicant to be at least 21 years old would violate the Maryland statute that prohibits age discrimination in employment, unless DOC established that a minimum age of 21 was a bona fide occupational qualification for a correctional officer.

*Opinion No. 02-017
October 7, 2002*

ELECTIONS – DATE OF NEXT MUNICIPAL GENERAL ELECTION IN BALTIMORE CITY

There is an apparent inconsistency between State election law and the Baltimore City Charter concerning the date of the municipal general election in Baltimore City. The City Charter now places that election in the same year as the presidential election; State election law refers to the City’s general election as occurring on a different four-year cycle – *i.e.*, one year after the gubernatorial election.

Question: When should the next municipal general election be held in Baltimore City?

Answer: November 4, 2004. State election law should be construed so that it is consistent with the City Charter. The City Charter has set the date of the municipal general election pursuant to a longstanding delegation from the General Assembly authorized by the State Constitution. The specification of the year for the City’s general election that first appeared in a recent revision of the State election law was not intended to override the City’s choice of an election cycle, but simply to reference the City’s practice at the time the revision was enacted.

*Opinion No. 02-018
October 17, 2002*

HEALTH INSURANCE – SCOPE OF INSURANCE COMMISSIONER’S AUTHORITY OVER CONVERSION OF NONPROFIT HEALTH SERVICE PLAN NOT DOMICILED IN MARYLAND

Question: Is the conversion and sale of Group Hospitalization and Medical Services, Inc. (“GHMSI”), a subsidiary of CareFirst, Inc. domiciled in the District of Columbia, subject to the approval of the Maryland Insurance Commissioner (“the Commissioner”)? If the Department of Insurance and Securities Regulation in the District of Columbia (“DISR”) approves the transaction relating to GHMSI, is approval by the Commissioner also required?

Answer: **The Commissioner** has authority to review the transaction relating to GHMSI under at least three statutes: (1) the Maryland Insurance Acquisitions Disclosure and Control Act, (2) provisions of Title 14 of the Insurance Article governing nonprofit health service plans, and (3) the State law governing conversion of

nonprofit health entities to for-profit status. Under those statutes, the Commissioner must review the conversion and sale of an entity like GHMSI to assess its competitive impact, to ensure that the transaction is fair to policyholders, to preserve the insurer's financial stability, and to protect public or charitable assets. Each of those statutes allows the Commissioner to defer to the judgment of DISR in certain circumstances. However, it is within the Commissioner's discretion to decide whether and how much to defer to that judgment. Approval by DISR does not preclude review by the Commissioner under Maryland law.

*Opinion No. 02-019
November 12, 2002*

ADVICE LETTERS

ADMINISTRATIVE PROCEDURE ACT – ADOPTION OF MARYLAND FIRE SERVICE HEALTH AND SAFETY CONSENSUS STANDARD

Question: Is the Maryland Fire Service Health and Safety Consensus Standard (the "Consensus Standard"), which is applicable to local fire and rescue departments engaged in emergency operations, a regulation that must be adopted in accordance with the State Administrative Procedure Act?

Answer: If the Consensus Standard has been approved by the Commissioner of Labor and Industry in administering the law to protect the health and safety of employees, it is a regulation subject to the APA, regardless of whether it can also be deemed a "guideline."

*Letter to
Senator Delores G. Kelley
November 7, 2002*

ELECTIONS – SPENDING CAMPAIGN FUNDS FOR GUBERNATORIAL TRANSITION

Question: May the Governor-elect's campaign committee spend money to assist the Governor-elect's transition?

Answer: Yes.

*Letter to
Carville B. Collins, Esquire
November 19, 2002*

PAYMENT FOR WALK-AROUND SERVICES ON ELECTION DAY

State election law defines the term "walk-around services" and prohibits payment for those and other services performed on election day.

Q1: May individuals be compensated to attend training so that they can electioneer on election day?

Answer: No.

Q2: May individuals be compensated for walk-around services if those services relate only to a federal congressional race?

Answer: No.

Q3: May individuals be compensated for simply urging voters to vote on election day?

Answer: It is conceivable that an individual who simply urged a voter to perform his or her civic duty could do so in a neutral manner without violating the election law. However, the individual could not state a preference for a particular party, slate, or candidate, or otherwise make a preference apparent to the voter. Thus, an oral statement seeking or expressing support for a particular candidate, the distribution of literature favoring or disfavoring a particular candidate, or even the display of campaign paraphernalia during contact with voters would render the payments illegal.

*Letter to
Stephen Montanarelli, State Prosecutor
November 4, 2002*

**FIRST AMENDMENT –
RELIGIOUS ACTIVITY ON SCHOOL PROPERTY**

Q1: Could the General Assembly constitutionally prohibit the use of public school property for voluntary student prayer or other religious activities?

Answer: No; such a prohibition would inevitably violate the Free Speech Clause of the First Amendment.

Q2: Could the General Assembly constitutionally prevent public school teachers from dispensing religious information of any kind?

Answer: It is now common school practice for religions to be discussed in the context of history and for various religions to be discussed in social studies or related classes. However, the General Assembly could provide by law that these topics not be included in public school curricula.

*Letter to
Delegate Samuel I. Rosenberg
December 10, 2002*

**HEALTH CARE FUNDING –
CANCER PROGRAM ELIGIBILITY**

Question: Can the Department of Health and Mental Hygiene adopt a regulation setting eligibility to participate in a breast cancer program at an income level different from the level set by the statute creating the program?

Answer: No; however, the Department may, by regulation, establish priorities under which program services will be provided if full funding is not available.

*Letter to
Delegate Shirley Nathan-Pulliam
December 24, 2002*

**MUNICIPALITIES –
INFRASTRUCTURE FINANCING**

Article 23A, §44A concerns the financing by municipal corporations of infrastructure

improvements and provides for the establishment of special tax districts.

Question: Does the statute authorize a municipal corporation to levy taxes only to redeem bonds, or can the municipal corporation levy taxes without issuing bonds?

Answer: The text and legislative history of the statute indicate that taxes may be levied under its authority only if the purpose is to redeem bonds issued to finance infrastructure improvements.

*Letter to
Delegate Kumar Barve
October 1, 2002*

**State-Chartered College –
Change of Name**

Question: Does the Board of Trustees of Western Maryland College, a State-chartered corporation, have authority to change the corporate name?

Answer: The college charter, which was granted by the General Assembly, designated the name “Western Maryland College” and reserved to the Legislature the right to alter the charter. However, the Board of Trustees has the benefit of the general corporation laws of Maryland, which expressly authorize a board to change a corporate name.

*Letter to
Senator Walter M. Baker
December 30, 2002*

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